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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 379th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 5 May 1999, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.379/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Second periodic report of Bulgaria (continued) (CAT/C/17/Add.19)

Conclusions and recommendations of the Committee

1. At the invitation of the Chairman, the members of the delegation of Bulgaria resumed their places at the Committee table.

2. Mr. SØRENSEN (Country Rapporteur), read out the following text containing the conclusions and recommendations adopted by the Committee concerning the second periodic report of Bulgaria:

"1. The Committee considered the second periodic report of Bulgaria (CAT/C/17/Add.19) at its 372nd, 375th and 379th meetings, held on 30 April 1999 and 3 and 5 May 1999 (CAT/C/SR.372, 375 and 379) and has adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the second periodic report of Bulgaria submitted in accordance with the guidelines for the preparation of State party reports. It appreciates the information provided by the representative of Bulgaria in his introductory statement and the open and fruitful dialogue.

3. However, the Committee regrets that the second periodic report was 7 years overdue.

B. Positive aspects

4. The Committee notes with great satisfaction that the State party has:

(a) made the declarations recognizing the Committee's competence under articles 21 and 22 of the Convention;

(b) ratified among other international and regional treaties the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT);

(c) abolished the death penalty;

(d) continued to reform and amend its domestic laws in order to protect human rights;

(e) continued its efforts to educate law enforcement officials in the field of human rights, particularly with regard to the prohibition against torture.

C. Factors and difficulties impeding the application of the provisions of the Convention

5. The Committee takes note of the economic problems currently existing in Bulgaria and the adverse effect that they have on some of the reforms in progress.

6. It recalls, however, that such difficulties could never justify breaches of articles 1, 2 and 16 of the Convention.

D. Subjects of concern

7. The lack in domestic law of a definition of torture in accordance with article 1 of the Convention and the failure to ensure that all acts of torture are offences under criminal law;

8. The legislative and other measures are not sufficiently effective to ensure respect for the provisions of article 3 of the Convention;

9. The lack of measures to ensure universal jurisdiction with regard to acts of torture in all circumstances;

10. The continued reports from reliable non-governmental organizations of ill-treatment by public officials, particularly the police, especially against persons belonging to ethnic minorities; and

11. The deficiencies relating to a prompt and impartial system of investigation of alleged cases of torture and the failure to bring those allegations before a judge or other appropriate judicial authority.

E. Recommendations

12. The Committee recommends that the State party:

(a) continue its effort to implement the provisions of the Convention, particularly articles 1, 2, 3, 4, 5 and 6 by adopting the necessary legislative measures in that regard;

(b) continue its policies and efforts to educate law enforcement personnel as well as medical personnel about the prohibition of torture;

(c) take effective steps to put an end to practices of ill-treatment by the police which still occur;

(d) ensure that all prisoners' correspondence addressed to international bodies of investigation or settlement of disputes is excluded from 'censor checks' by prison personnel or other authorities; and

(e) submit its third and fourth periodic reports due on 25 June 1996 and 25 June 2000 respectively on 25 June 2000 at the latest."

3. Mr. DRAGANOV (Bulgaria) thanked the Committee for its attention and undertook to transmit the conclusions and recommendations to the appropriate authorities.

4. The delegation of Bulgaria withdrew.

The meeting was suspended at 3.10 p.m. and resumed at 3.30 p.m.

Second periodic report of Luxembourg (continued) (CAT/C/17/Add.20)

5. At the invitation of the Chairman, the members of the delegation of Luxembourg resumed their places at the Committee table.

6. Mrs. CLEMANG (Luxembourg), in reply to the questions raised by Mr. Silva Henriques Gaspar, said that the bill regarding non-extradition of persons who might be subjected to torture, criminalization of torture and the universal jurisdiction of the Luxembourg courts had been submitted by the Government to the Chamber of Deputies on 26 February 1999 and that the decision of the Conseil d'Etat was expected during the autumn of 1999. The existing article 39 of the Code of Pre-Trial Proceedings established the right of a person taken into custody to contact a person of his choice, to have access to a doctor, either designated by the State Prosecutor ex officio or chosen by the detainee himself or a member of his family, and to be informed by the judicial police of his unrestricted right to counsel; the bill required that the detainee should be informed in writing of these rights, in a language he understood, against a written acknowledgement. The bill also specified that factual details on all those points should appear in the record of proceedings, including the reasons for any refusal or delay in permitting a detained person to contact a person of his choice.

7. Mr. NICOLAY (Luxembourg) added that the only occasion on which such contact had been denied had involved persons held in connection with a drug trafficking offence. The bill reflected the recommendations of a European Parliament delegation that had visited the country.

8. In response to Mr. Silva Henriques Gaspar's concern regarding disciplinary measures imposed on minors confined in Luxembourg prison, he said that, although no formal appeal mechanism existed, the fact that all decisions relating to punishment of minors were immediately reported to a judge who could amend them or suspend their execution constituted a substantial guarantee for detained minors. The list that had been circulated of disciplinary measures to which minors had been sentenced in Luxembourg prison in 1997 and 1998 demonstrated that most such measures were in the nature of a reprimand. Likewise, the President of the Monitoring and Coordination Committee could modify or suspend the execution of a solitary confinement order involving a minor in a State socio-educational centre; a specific appeal mechanism against such decisions also existed. A list had been circulated of the solitary confinement orders issued in 1997.

9. Existing legislation did not provide for appeal against the solitary confinement of adults and there was no independent body to receive detainees' complaints of violations of rights. In view of the urgent need to remedy that situation, the proposed amendments referred to in paragraphs 14 and 15 of the

report provided for the possibility of appealing by means of a letter addressed to the penal commission, composed of three judges, who were required to rule on the matter within 15 days. The information contained in paragraph 38 of the report regarding appeals against a solitary confinement decision was incorrect and the existing situation was accurately reflected in paragraph 15; the bill dealing with that matter, which was expected to become law by the end of the year, would remedy the absence of a formal appeal mechanism against a solitary confinement decision.

10. The Committee against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had criticized the maximum term of solitary confinement in Luxembourg, namely 6 months or, in the case of repeat offenders, 12 months, as being too long. The Minister of Justice had decided to review the entire disciplinary procedure regime and amend the list of penalties, some of which were obsolete. A working group had begun studying the subject and would probably propose a reduction in the maximum term of solitary confinement to three or four months, with provision for renewal by a special commission in the case of dangerous prisoners.

11. The additional material to be circulated to the Committee contained figures for solitary confinement in 1997 and 1998. The maximum penalty had been imposed on only one occasion.

12. Mrs. CLEMANG (Luxembourg) said that the provisions of article 8, paragraphs 1 and 3, of the Convention were directly applicable in Luxembourg. A bill amending the 1870 Act concerning extradition to cover acts of torture was before Parliament and the regulations governing extradition were being updated. A number of bilateral agreements provided for extradition for offences punishable by a term of imprisonment of at least one year.

13. With regard to article 11 of the Convention, there was no specific body responsible for monitoring interrogation procedures and custody arrangements because no case of torture had been recorded in Luxembourg for several decades. However, there were procedural provisions that prevented law enforcement officials from coercing arrested persons into making statements and from questioning them after they had been brought before an examining magistrate.

14. Turning to articles 12 and 13 of the Convention, she said that, although there was no specific legal provision for the investigation of suspected acts of torture, effective guarantees existed for alleged victims. The Office of the Public Prosecutor ordered a preliminary investigation in all cases of suspected assault causing bodily harm. The Minister of Justice could also order the Office of the Public Prosecutor to institute legal proceedings in such cases. The right of individuals to complain to the judicial police, the public prosecutor or the examining magistrate was unlimited. In the event of allegations of professional misconduct by, for example, police officers or prison wardens, a disciplinary investigation would be conducted alongside the criminal investigation by the appropriate authorities.

15. With regard to article 14 of the Convention, the basic principle was that a victim of torture or ill-treatment could sue for damages in the courts. In the case of criminal offences, the victim could opt either for a civil action or for criminal indemnification proceedings. If the author of the alleged offence was a State official, the victim could sue the State for damages. Such cases were fortunately rare. However, the State could also be sued for damages due to excessively protracted legal proceedings.

16. The Government did not consider that supplementary legislation was needed to cover article 15 of the Convention. The case law demonstrated that evidence obtained in an unlawful manner was inadmissible. Luxembourg generally aligned itself with French and Belgian case law and there were no grounds to fear a reversal of policy. In the 1980s, for example, the judicial authorities in Luxembourg had ruled that evidence obtained through telephone tapping, which had been unlawful under all circumstances at the time, was inadmissible.

17. There had never been a case in which a statement obtained as a result of torture had been used to prosecute the torturer. However, the threat or use of torture in such circumstances would undoubtedly constitute grounds for prosecuting the culprit.

18. Mr. NICOLAI (Luxembourg) said the Government considered that the existing legislation and regulations covered all acts of cruel, inhuman or degrading treatment or punishment. He drew attention, in particular, to the provisions of the Penal Code concerning abuse of authority, racism and assault causing bodily harm, the legislation on the rights and duties of public officials and the regulations governing the regime in penitentiary establishments.

19. He provided the following daily figures for minors held in Luxembourg prison: 4 boys and 1 girl on 1 January 1997; 9 boys and no girls on 1 September 1997; 7 boys and 1 girl on 1 January 1998; 7 boys and no girls on 1 September 1998; 16 boys and 2 girls on 29 April 1999. An 18-year-old who appeared on the list for 29 April 1999 had committed a serious offence two days before reaching the age of majority but had been tried as a minor. There were usually about 10 minors in the prison. The figure of 18 was exceptional and occurred about twice a year.

20. The CPT had criticized the lack of basic facilities and specialized staff for minor detainees. The Government had since taken steps to improve the situation but it had proved difficult to recruit the necessary staff. The construction of a special security annex for minors would begin in late 1999.

21. Mrs. CLEMANG (Luxembourg) said that unaccompanied minors seeking asylum in Luxembourg were a recent phenomenon. The Ministry of the Family, having placed them in a temporary facility, requested the youth court to take protective measures on their behalf under the Act of 10 August 1992. They were then generally placed in a State-run children's hostel or a host family. Although the existing regulations made no provision for social support, the Ministry of the Family arranged for psycho-social care through the child welfare services. However, the authorities were aware that such ad hoc assistance should be replaced by more formal arrangements.

22. She was unable to provide further details concerning the case of a brother and sister aged 17 and 19 who had been given accommodation in a hotel. The authorities had probably failed to realize that they were in need of special assistance.

23. A rare blunder had occurred in the case of the 15-year-old Albanian who had been discovered homeless. In view of his inability to communicate in any language other than Albanian, the authorities had decided against placing him in a regular children's home in Luxembourg. His care had been entrusted instead to a non-governmental organization (NGO) with a record of regular cooperation with the Government on refugee issues. The NGO had arranged a placement for the youth in Metz, France, whereupon the Government had received a letter from the French authorities demanding why Luxembourg had proved unable to house him. In future, the Government would strive to ensure closer supervision of the placement of minors by NGOs.

24. The delegation could provide no information on the case of the 11-year-old alleged to have been placed in an adult penitentiary. There was little doubt, however, that an infraction had occurred.

25. Mr. NICOLAY (Luxembourg), in reply to questions raised by Mr. Sørensen, said that disciplinary sanctions applied to all detainees, including those in pre-trial detention, but only in the punishment of an offence. An identical regime applied to convicted persons.

26. Incommunicado detention could be ordered by an examining magistrate for a 10-day period, renewable once only, and could be appealed against. It did not affect the ordinary detention regime; it merely barred the detainee from communication with all persons apart from the defence lawyer. The detainee must be examined by a medical officer prior to the implementation of the measure. In response to concerns voiced by international NGOs in that regard, the regime was currently under government reappraisal.

27. It was his own personal view that a physician should not be involved in ordering solitary confinement as a punishment, in view of its potentially deleterious effects on a person's mental and physical well-being. He shared Mr. Sørensen's view that the physician's role should rather be to assist detainees and persons subjected to solitary confinement. It was to be hoped that the relevant legislation would be revised in the near future.

28. Mrs. PRANCHÈRE-TOMASSINI (Luxembourg), responding to a further question put by Mr. Sørensen, confirmed that there were currently no rehabilitation centres for torture victims in Luxembourg. Victims did, however, have the right to therapy with a physician of their choice. If the necessary treatment could not be provided within the country, there was the possibility of referral to a centre in Belgium or France. Such cases had hitherto been rare, but the situation was to be reappraised in view of the influx of refugees. In addition to providing care for individuals, the Government was also contributing to the United Nations Voluntary Fund for Victims of Torture.

29. In cooperation with international organizations in Geneva, the Government was also on the point of establishing a rehabilitation centre for child victims of armed conflict in the unoccupied part of the premises of the Permanent Mission of Luxembourg.

30. The CHAIRMAN thanked the delegation of Luxembourg for their replies to the Committee's questions.

31. The delegation of Luxembourg withdrew.

The public part of the meeting rose at 4.30 p.m.